

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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In the Matter of)

Pacific Bell Petition for)
Rulemaking to Amend Section)
69.106 of the Commission's)
Rules)

RM-8496

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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COMMENTS OF COMPUSERVE INCORPORATED

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SUMMARY

The switched access rate structure which PacBell seeks to amend by permitting local exchange companies to impose a per-message call setup charge has allowed a wide range of economically beneficial information services to flourish. These services, such as financial transactions processing and electronic data interchange, have become an essential component of the nation's economy because both government and industry depend upon them to increase productivity, efficiency, and innovation. Moreover, they are expected to play an important role in development of the emerging National Information Infrastructure. Accordingly, because the relief requested by PacBell, if ultimately granted by the Commission, would increase significantly the costs of providing the aforementioned services, and because this could undermine the economic viability of many of those services and thereby harm the nation's economy, the Commission should deny PacBell's Petition.

Relatedly, allowing imposition of a call setup charge would be inconsistent with various Commission policies. In this regard, despite numerous reviews of the local switching rate structure, the Commission has never wavered from its judgment that the costs associated with local switching are best recovered through usage-sensitive charges, and on two occasions, has specifically denied requests to permit establishment of call setup charges. Moreover, grant of the relief requested by PacBell would contravene the goals of promoting efficient use of the public switched network and preventing "uneconomic bypass" of the network that were identified by the Commission at the time it established the current access charge regime.

PacBell's Petition should also be denied because it is procedurally defective on a number of grounds. First, PacBell has not demonstrated, as it is required to do pursuant to well-established Commission policy, that imposition of a call setup charge will not result in unreasonable discrimination between users of the public switched network. Second, the Petition is procedurally defective because it does not comply with Section 1.401(c) of the Commission's rules which requires, among other things, that parties filing rulemaking petitions provide data to backup assertions made in their petitions.

Moreover, PacBell's Petition arguably contravenes Section 7(a) of the Communications Act. Section 7(a) mandates that the policy of the United States is to encourage the provision of new technologies and services to the public. The relief requested in PacBell's Petition would have a chilling effect on the expansion of new, advanced services, such as the electronic transfer of government benefits, and, therefore, would not be consistent with the purposes underlying Section 7(a).

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COMMENTS OF COMPUSERVE INCORPORATED

CompuServe Incorporated ("CompuServe"), by its undersigned attorneys, hereby submits these comments in response to Pacific Bell's ("PacBell's") above-referenced Petition for Rulemaking ("Petition") that was filed with the Federal Communications Commission ("Commission") on June 30, 1994. On July 21, 1994, the Commission put PacBell's Petition on public notice,^{1/} and pursuant to Section 1.405 of the Commission's rules, comments are due on PacBell's Petition by August 22, 1994.^{2/}

I. INTRODUCTION

1. CompuServe, based in Columbus, Ohio, is one of the nation's leading providers of on-line information database services for both residential and business customers. CompuServe provides over 2,000,000 residential, educational, nonprofit, and small business subscribers with access to over 1,700 interactive computer-based services. In addition, over 1,800 companies rely

^{1/} Public Notice, Report No. 2022 (July 21, 1994).

^{2/} 47 C.F.R. § 1.405 (1994).

on CompuServe's business information services, including financial transactions processing and electronic data interchange ("EDI") services. For example, VISA International, an association of over 21,000 financial institutions, is a customer to whom CompuServe provides point-of-sale ("POS") credit card verification services.^{3/} These services are used by millions of merchants worldwide to provide prompt processing of credit card transactions to their customers. Today, most POS and other financial processing transactions, including those handled by CompuServe, are completed using the public switched network.

2. PacBell's Petition asks that the Commission institute a rulemaking proceeding which looks toward amendment of Section 69.106 of the Commission's rules to allow the switched access local switching rate structure set forth therein to encompass a per-message call setup charge in addition to the current per-minute usage charge.^{4/} The local switching rate element compensates local exchange carriers ("LECs") for their local switching costs. These are the costs associated with setting up

^{3/} VISA International utilizes CompuServe's POS services to process approximately 1,000,000 credit card transactions each year.

^{4/} Section 69.106(a) provides as follows:

charges that are expressed in dollars and cents per access minute of use shall be assessed [sic] upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign service.

47 C.F.R. § 69.106(a) (1994).

the signalling portion of calls - call setup - and call maintenance costs related to call duration. PacBell asserts that, regardless of duration, all calls incur the costs of call setup.^{5/}

3. PacBell's Petition claims that the current local switching rate structure creates an uneconomic scheme in which long duration calls subsidize short duration calls.^{6/} In this regard, PacBell asserts that it developed its current rate using the average length of a call - 3.86 minutes - so that calls less than 3.86 minutes generally do not recover their costs while calls lasting longer than 3.86 minutes over-recover their costs.^{7/} Specifically, PacBell alleges that it costs almost five times more for it to set up a call than to provide a minute of use.^{8/} In light of the foregoing and because of an alleged proliferation of short duration calls in recent years, PacBell argues that it may not be able to recover all of its costs in the future using the current local switching rate structure.^{9/}

^{5/} PacBell Petition at 2.

^{6/} PacBell Petition at 1.

^{7/} PacBell Petition at 2.

^{8/} PacBell Petition at 6 and 7.

^{9/} PacBell Petition at 7.

II. DISCUSSION

- A. **The Current Switched Access Rate Structure Should Be Preserved Because It Has Allowed A Whole Multitude Of Economically Beneficial Services To Flourish And Will Likely Spur The Development Of Similar Services In The Future**

4. The Commission should deny PacBell's Petition. As PacBell notes, the public switched network is now being used to provide a whole host of services that did not exist, or were used less frequently, a decade ago.^{10/} These services have become an extremely important and growing component of the nation's economy, and are an acknowledged part of the Administration's National Information Infrastructure ("NII") initiative. The current switched access rate structure has allowed these services to flourish.

5. The most recent Department of Commerce ("DOC") Industrial Outlook report demonstrates the importance of the information services industry, including financial transactions processing and EDI services, to the nation's economy.^{11/} Specifically, the report predicts that:

information services will continue to be among the fastest growing sectors of the economy as government and industry depend on them for increasing productivity and efficiency, and in developing innovative solutions to problems.^{12/}

^{10/} PacBell indicates that these services include short-burst fax messages, paging, debit card transactions, and credit card and check verification techniques. PacBell Petition at 3 to 5.

^{11/} U.S. Industrial Outlook, U.S. Department of Commerce, 35th edition (January 1994).

^{12/} Id. at 25-1.

The report indicates that the segment of the information services industry that performs services such as credit card verification and billing is a particularly key segment.^{13/} Moreover, the same DOC report indicates that EDI has enormous potential to benefit the economy because it reduces transaction costs, time, and errors, and for this reason, is gaining popularity among suppliers and purchasers.^{14/}

6. In an even more recent report, DOC states that "electronic commerce" applications, which consist of financial transactions processing, EDI, and similar services, will:

help U.S. companies increase productivity by enabling rapid business transactions, data and information exchanges, and organizational changes. Through the ability to handle tremendous volumes of transactions and the ability to amass, analyze, and control large quantities of specialized data, organizations will be able to improve efficiency and accuracy, and reduce costs, while providing faster, more reliable, and more convenient services.^{15/}

The Information Infrastructure Report goes on to indicate that many companies realize the need to use "electronic commerce" to survive, and provides the following examples of the benefits that can result from using "electronic commerce":

Over the past decade, the banking and financial industries have invested heavily in automation and networking technologies to handle and process electronically an ever-increasing number of financial transactions. For example, the Clearinghouse for Interbank Payment Systems

^{13/} Id. at 25-3.

^{14/} Id.

^{15/} Putting the Information Infrastructure to Work: Report of the Information Infrastructure Task Force Committee on Applications and Technology, U.S. Department of Commerce at 28 (May 1994) ("Information Infrastructure Report").

coordinates daily bank-to-bank transactions worth nearly \$2 trillion while the nation's network of more than 75,000 Automated Teller Machines (ATMs) handles more than 6 billion transactions per year. In addition, one analysis of the New York Stock Exchange suggests that electronic trading saves stock buyers and sellers hundreds of millions of dollars annually. Examples of the effect of Electronic Commerce on specific financial institutions abound: Through the use of information technologies, Visa's peak capacity for processing credit card transactions grew from 30,000 per day in 1978 to over 1.4 million per day in 1991, while its response time for authorizations dropped from 5 minutes in 1973 to 1.1 seconds in 1991; through the deployment of an ATM network in 1977, Citibank increased its market share from 4 percent to 13.4 percent; by installing a computer-based network to resolve credit card disputes, Mellon Bank reduced its backlog of customer complaints from 5,200 to 2,200 resolving them in 25 days on average (versus 45 days previously).^{16/}

7. The foregoing demonstrates the importance that many of the services identified in the PacBell Petition have assumed to the nation's economic productivity and as a base for continued development of the NII. However, the relief requested by PacBell, if ultimately granted by the Commission, could undermine the economic viability of many of the services by increasing significantly the cost to CompuServe and others of providing the services. Because this obviously would have a deleterious impact on the nation's economy and essentially would penalize CompuServe and similarly situated companies for making extremely efficient use of the public switched network (i.e., limiting use of the network to very short durations), PacBell, rather than trying to

^{16/} Id. at 29.

shift costs through rate restructurings, should concentrate its efforts on finding less costly ways of setting up calls.^{17/}

8. Therefore, as demonstrated above, the current switched access rate regime has made a positive contribution to the public and the nation's economy. In other words, as Commissioner James H. Quello said earlier this month in another context: "if it ain't broke, don't break it."^{18/}

9. In the event the Commission wishes to consider the desirability of allowing call setup charges as part of the access charge rate structure, however, it should do so in the context of a more comprehensive access charge reform proceeding like the one recently proposed by the Ad Hoc Telecommunications Users Committee ("Ad Hoc"). In this way, all relevant issues, such as the relationship between transport and switching costs, could be considered together.^{19/}

^{17/} In fact, it is CompuServe's understanding that the costs of switching are becoming less variable, so that the issues identified by PacBell may be resolving themselves. In this regard, in its recent report on trends in the telephone industry, the Commission indicated that, during the 1980s, the Bell Operating Companies replaced their old electromechanical switches with new signalling systems "that permit calls to be set up more quickly and efficiently." Trends in Telephone Service, 1994 LEXIS 2092 at 16 (1994).

^{18/} Statement of Commissioner James H. Quello (August 1, 1994).

^{19/} Ad Hoc filed a petition for rulemaking with the Commission on April 15, 1994 asking that the Commission institute a comprehensive rulemaking proceeding to reform the rules governing access charges, jurisdictional separations, universal service, and pricing. Petition for Rulemaking of the Ad Hoc Telecommunications Users Committee to Amend Part 36 and 69 of the Commission's Rules to Effect Comprehensive Reform of the Access Charge System, RM-8480 (1994). There have also been a number of
(continued...)

B. Imposition Of A Call Setup Charge Would Be Inconsistent With Well-Established Commission Policies And Arguably The Communications Act

10. At the time it established its access charge regime, the Commission determined that the costs associated with local switching were best recovered through usage-sensitive charges.^{20/} The Commission, despite numerous reviews of the local switching rate structure, has never wavered from this judgement.^{21/} Moreover, on two occasions in the past, the Commission has specifically denied requests, one by Bell Atlantic and the other by U.S. West, for waiver of Section 69.106 to permit establishment of a call setup charge.^{22/} Therefore, grant of the relief requested in PacBell's Petition would depart

^{19/} (...continued)
other petitions for rulemaking filed with the Commission recently concerning comprehensive changes in the access charge regime. See Petition for Rulemaking of the United States Telephone Association to Reform the Interstate Access Charge Rules, RM-8356 (1993).

^{20/} MTS/WATS Market Structure, Phase I, 93 F.C.C. 2d 241, 304 to 307 (1983), modified on recon., 97 F.C.C. 2d 682 (1983), modified on further recon., 97 F.C.C. 2d 834 (1984), aff'd in part and remanded in part, Nat'l Ass'n of Reg. Comm'rs v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985), Phase I modified on second further recon., 101 F.C.C. 2d 1222 (1985), recon. denied, 102 F.C.C. 2d 849 (1985), aff'd sub nom. American Tel. & Tel. Co. v. FCC, 832 F.2d 1285 (D.C. Cir. 1987).

^{21/} See, e.g., Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, to Conform it With Part 36, Jurisdictional Separations Procedures, 2 FCC Rcd 6447, 6455 to 6457 (1987).

^{22/} See Bell Atlantic Telephone Companies Petition for Waiver of Sections 69.106 and 69.205 of the Commission's Rules to Permit a Call Setup Charge, 4 FCC Rcd 7210 (1989); US West Communications, Inc. Petition for Waiver of Part 69 of the Commission's Rules, 7 FCC Rcd 4043 (1992).

from long-standing Commission policy in this area upon which customers have relied in configuring their network operations and purchasing equipment and software.

11. Also, grant of the relief requested by PacBell would contravene a number of the primary goals identified by the Commission at the time it established the current access charge regime. One of those goals was to promote efficient use of the public switched network.^{23/} As demonstrated above, imposition of a call setup charge would penalize the efficient use currently being made of the network by transactions processors and other providers of similar information services. In addition, imposition of a call setup charge would contravene the Commission's goal of preventing "uneconomic bypass" of the public switched network.^{24/} Obviously, if the costs of using the network are increased, as would be the case if a call setup charge is imposed, CompuServe and similarly situated companies will have a strong incentive to explore less expensive, non-public network distribution means.

12. Moreover, PacBell's Petition is procedurally defective because PacBell fails to demonstrate that imposition of a call setup charge would not adversely impact competition in the information services industry, as well as other industries, subject to its market power as a dominant provider of switched

^{23/} MTS and WATS Market Structure, 97 F.C.C. 2d 834, 834 to 835 (1984).

^{24/} Id.

services. In 1990, the Commission explicitly recognized that the restructuring of switched access rate elements subject to price cap regulation is likely to raise issues of unreasonable discrimination:

LECs subject to price caps should continue to adhere to the rate structure requirements of Part 69 for the switched access elements. A primary purpose of the rate structures embodied in Part 69 is to eliminate unreasonable discrimination between service users. When these service users are interexchange carriers or enhanced service providers, these rules also promote competition in two markets in which we have concluded that a competitive market structure will promote the public interest. In the face of the significant market power retained by LECs in the provision of interstate access, rules that discourage unreasonable discrimination and its potentially adverse effect on competition should be given precedence over the benefits that might come from LECs' ability to depart from the Part 69 access rate structure.^{25/}

Because PacBell does not demonstrate that imposition of a call setup charge would not adversely effect competition in a market in which it may now compete, its Petition is procedurally defective.^{26/}

13. PacBell's Petition is procedurally defective on other grounds as well because it does not comply with the Commission's requirements for rulemaking petitions. Section 1.401(c) of the Commission's rules requires, among other things, that parties filing rulemaking petitions provide "all facts, views, arguments,

^{25/} Policy and Rule Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, 6826 (1990).

^{26/} Depending on whether or not PacBell is able to make such a demonstration, this may prove to be more than a mere procedural defect.

and data deemed to support the action requested,"^{27/} but PacBell's Petition contains no underlying backup data of the type that would be anticipated to substantiate the claim made therein that short duration calls are being subsidized by long duration calls.^{28/}

14. Finally, Section 7(a) of the Communications Act declares that "it shall be the policy of the United States to encourage the provision of new technologies and services to the public."^{29/} However, if the relief requested in PacBell's Petition ultimately is granted, in addition to undermining the economic viability of many of the services currently offered by information service providers, it would have a chilling effect on the expansion of those services into new areas. For instance, one of the priorities of the Administration's NII initiative is to use information technology, such as financial transactions processing, to deliver nationwide, fast, and efficient government assistance to the public.^{30/} This is known as Electronic Benefits Transfer ("EBT") and could be used to deliver, among other things, food stamps, social security, and veterans benefits.^{31/} Obviously, action by the Commission that could

^{27/} 47 C.F.R. § 1.401(c) (1994).

^{28/} Also, Section 1.401(c) requires rulemaking petitions to contain the text or substance of any proposed additions, changes, or deletions to the Commission's rules. Id.

^{29/} 47 U.S.C. § 157(a) (1994).

^{30/} Information Infrastructure Report at 103.

^{31/} Id.

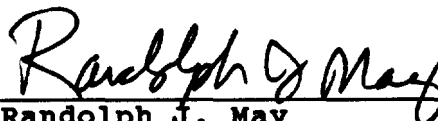
chill the development of EBT and similar services would not accord with the purposes underlying Section 7(a).

III. CONCLUSION

15. In light of the foregoing, CompuServe Incorporated urges the Commission to deny Pacific Bell's Petition for Rulemaking.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Teresa A. Pumphrey, hereby certify that a copy of the foregoing Comments of CompuServe Incorporated has been served by hand delivery, or by first-class U.S. mail, postage prepaid, this 22nd day of August 1994 on the following:

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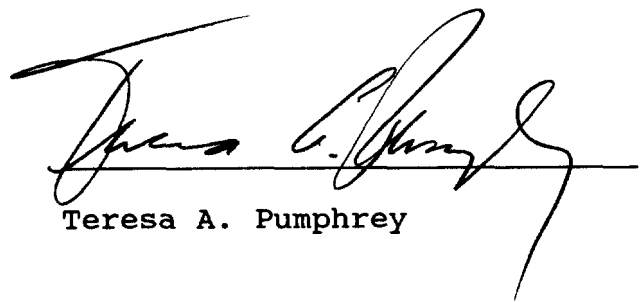
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